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SEC

SERVICE DATE – AUGUST 30, 2005

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. MC-F-21008

EAST WEST RESORT TRANSPORTATION, LLC, AND TMS, LLC, D/B/A
COLORADO MOUNTAIN EXPRESS — PETITION FOR DECLARATORY ORDER
— MOTOR CARRIER TRANSPORTATION OF PASSENGERS IN COLORADO

Decided: August 29, 2005

On September 24, 2004, East West Resort Transportation, LLC, and TMS, LLC d/b/a Colorado Mountain Express, which do business under the single name of Colorado Mountain Express (CME) and will be referred to jointly as such here, filed with the Board, and served on the Colorado Public Utilities Commission (CPUC), a petition for a declaratory order. CME requested that the Board determine whether 49 U.S.C. 14501(a) preempts CPUC from regulating the rates which CME may assess for scheduled, regular-route, intercity motor carrier transportation of passengers in Colorado. CME stated that CPUC had commenced an enforcement action against CME, charging CME with having carried passengers on its vehicles at rates not on file with CPUC and having collected fares other than those prescribed by CPUC, in violation of Colorado law. CME claimed that it is a motor carrier engaged in interstate commerce over its authorized routes, and therefore that section 14501(a) preempts CPUC from requiring CME to file its rates with the state or charge state-prescribed rates. On October 14, 2004, CPUC filed a petition to intervene and request for an order establishing a procedural schedule.

By decision served on March 21, 2005, the Board granted CPUC's petition to intervene and instituted a declaratory order proceeding. By decision served on April 8, 2005, the due dates for CPUC's reply and CME's rebuttal were extended to June 10, 2005, and June 20, 2005, respectively, in order for CPUC to conduct discovery. On April 14, 2005, CME filed a motion for protective order, stating that the documents requested by CPUC in discovery contained proprietary and commercially sensitive information and that the public disclosure of that information could be competitively damaging. By decision served on May 19, 2005, the Board granted the motion for the protective order. On May 25, 2005, and May 27, 2005, CPUC filed petitions requesting that the Board issue subpoenas requiring that representatives of two nonparty entities, Vail Resorts Management Company (Vail Resorts) and S&L Travel Partners, Inc., which owns travel businesses including but not limited to Aspen Ski Tours, Inc. and Ski.com, appear at deposition and produce documents. By decision served on June 1, 2005, the motions for subpoenas to appear at deposition were granted; however, it was determined that the motions for subpoenas to produce documents would be addressed, if necessary, in a subsequent decision. By decisions served on June 9, 2005, June 24, 2005, and

August 15, 2005, CPUC's motions to modify the procedural schedule were granted. According to the current schedule, CPUC's reply is due by August 31, 2005, and CME's rebuttal is due by September 16, 2005.

On August 26, 2005, CPUC filed a fourth motion to modify the procedural schedule. CPUC indicates that resolution of discovery issues took longer than expected, and that a CPUC witness who was scheduled to review CME documents in accordance with the parties' discovery agreement has been unable to complete that review because of obligations to another matter. Therefore, CPUC states that additional time is needed for CPUC to file its reply.¹ According to CPUC, CME does not oppose the motion, and the parties have agreed on a suggested modified procedural schedule that establishes September 9, 2005, as the reply due date and September 30, 2005, as the rebuttal due date.

Good cause does exist to extend the due date for CPUC's reply until September 9, 2005. CPUC has justified an extension of this duration. CME's rebuttal will be due on September 30, 2005.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. CPUC's request to waive the filing requirement of 49 CFR 1104.7(b), and its motion to modify the procedural schedule are granted.
2. The due date for filing a reply to CME's petition for declaratory order is extended to September 9, 2005.
3. CME's rebuttal statement is due by September 30, 2005.
4. This decision is effective on its service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary

¹ Under 49 CFR 1110.9, CPUC seeks waiver of the "not less than 10 days before the due date" filing requirement of 49 CFR 1104.7(b). Inasmuch as there are no objections to such a waiver, and no party will be prejudiced, the waiver request will be granted.